

310 CMR: 44.00: DEP SELECTION, APPROVAL AND REGULATION OF WATER POLLUTION ABATEMENT PROJECTS RECEIVING FINANCIAL ASSISTANCE FROM THE STATE REVOLVING FUND

Section

- 44.01: Authority and Effective Date
- 44.02: Purpose
- 44.03: Definitions
- 44.04: Eligible Projects
- 44.05: Priority System
- 44.06: Project Selection Criteria
- 44.07: Eligible Project Costs
- 44.08: Planning Requirements
- 44.09: Environmental Review and Federal Cross-Cutter Requirements
- 44.10: Affirmative Action and Minority/Women Business Enterprise Requirements
- 44.11: Project Approval and Regulation

44.01: Authority

310 CMR 44.00 has been adopted pursuant to M.G.L. c. 21, s. 27A and St. 1989, c. 275.

44.02: Purpose

310 CMR 44.00 sets forth the Department's authority and responsibilities to select, approve and regulate water pollution abatement projects receiving financial assistance under the State Revolving Fund ("SRF") Program.

The Department may issue supplemental policies, guidelines, guidance documents and/or administrative procedures to assist in the implementation and administration of 310 CMR 44.00

44.03: Definitions

For the purposes of 310 CMR 44.00 *et seq.*, the following terms shall have the meaning set forth in 310 CMR 44.00 unless the context clearly requires otherwise.

Act: St. 1989, c. 275, as amended by St. 1992, c. 203, and as may be further amended from time to time.

Clean Water Act: The Federal Water Pollution Control Act, Public Law 92-500, 33 USC s. 1251, *et seq.*, as amended.

Collection System Projects: Projects for the construction of a collection system or its related components. Collection systems generally consist of each and all of the common lateral sewers and appurtenances of publicly owned treatment works which are primarily installed to receive wastewaters from individual structures or from private property, and which include service connection "Y" fittings and service connections within the boundary of the public way or easement.

Community Comprehensive Septic Management Program: As authorized by St. 1996, c. 15, s.2, or by any other applicable law, a loan program to local governmental units administered within the Fund and under 310 CMR 44.00 to assist eligible homeowners to upgrade failed septic systems in compliance with 310 CMR 15.000 (Title 5) through underlying betterment agreements between the local governmental unit and such homeowners pursuant to M.G.L. c.111, s.127B½.

Comprehensive Water Resource Wastewater Management Planning: ~~Planning performed pursuant to 310 CMR 44.08(2)(a) and (3) and consistent with the Department's "Guide to Comprehensive Wastewater Management Planning".~~ In accordance with the Department's Guide to Water Resource Management Planning, a Comprehensive Water Resource Management Plan identifies all the community's needs/problems in one sector of its water resource structure, evaluates alternative means of meeting those needs, selects the most cost-effective and environmentally appropriate remedy, and proposes an implementation plan and schedule. There are three types of Comprehensive Water Resource Management Plans: Comprehensive Wastewater Management Plans that evaluate the community's wastewater infrastructure/management needs, Comprehensive Water Supply Management Plans that focus on the community's water supply infrastructure and management issues, and Comprehensive Stormwater Management Plans that focus on the community's stormwater management needs.

Cost: As applied to any water pollution abatement project, any or all costs, whenever incurred, approved by the Department in accordance with M.G.L. c. 21, s. 27A, of carrying out a project including, without limiting the generality of the foregoing:

costs for planning, preparation of studies and surveys, design, construction, expansion, facilities, improvement and rehabilitation, acquisition of real property, personal property, materials, machinery or equipment, start-up costs, demolitions and relocations, reasonable reserves and working capital, interest on loans, local governmental obligations and notes in anticipation of thereof prior

to and during construction of such project or prior to the date of such loan, if later, administrative, legal and financing expenses, and other expenses necessary or incidental to the aforesaid.

Department: The Department of Environmental Protection.

Federal Cross-Cutters: Federal laws and authorities that apply by their own terms to projects receiving federal financial assistance such as the federal SRF. Such federal cross-cutters include, but are not limited to, environmental laws and authorities such as the Clean Air Act, Safe Drinking Water Act, Endangered Species Act, Coastal Zone Management Act, Wild and Scenic Rivers Act and the National Historic Preservation Act of 1966, and economic and miscellaneous authorities such as the procurement and contractor requirements associated with financial assistance programs under the Clean Water Act and Clean Air Act.

Grant Equivalency or Financial Equivalent of a Grant: The standard measure used by the Department and the Trust to determine the amount of subsidy applicable to the eligible costs of a project under the loan in accordance with M.G.L. c. 29C.

Guide to Comprehensive Wastewater Management Planning: The Department's document entitled "Guide to Comprehensive Wastewater Management Planning", as amended, which sets forth specific guidance on the required components of the comprehensive wastewater management process, including the identification of the wastewater needs/problem, the development and evaluation of alternatives, the cost effectiveness analysis, the selection of an alternative, and the public participation requirements.

Infiltration: Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through means which include, but are not limited to, defective pipes, pipe joints connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Infiltration/Inflow Projects: Projects which remove infiltration and inflow (i.e. water other than wastewater) from a sewer system, including construction associated with infiltration/inflow rehabilitation.

Infiltration/Inflow Rehabilitation: Construction associated with the rehabilitation of a sewer system to remove infiltration/inflow.

Inflow: Water other than wastewater that enters a sewer system (including sewer service connections) from sources which include but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

Integrated Water Resources Management Plan: In accordance with the Department's Guide to Water Resource Management Planning, an Integrated Water Resource Management Plan is a plan that identifies all of a community's/(ies') water resource infrastructure and management needs/problems including wastewater, water supply and stormwater, evaluates alternative means of meeting those needs, selects the most environmentally appropriate and cost-effective remedy, and proposes an implementation plan and schedule.

Intended Use Plan: An annual plan submitted by the Trust to EPA pursuant to s.606(c) of the Clean Water Act which identifies the intended use of the amounts available to the Fund as determined from time to time by the Trust and derived from the federal capitalization grant, state match amounts, loan repayments, investment earnings and any other moneys deposited by the Trust available to fund projects eligible for funding under Title VI of the Clean Water Act. The Intended Use Plan includes a project listing, a description of short and long term goals for the use of the funds, information on the activities to be supported, assurances for meeting certain Title VI requirements, and the criteria and method for the distribution of funds.

Intended Use Plan Project Listing: As the term is used in 310 CMR 44.00, the Intended Use Plan Project Listing means those projects identified by the Department for inclusion on the fundable portion of the calendar year priority list pursuant to 310 CMR 44.05(2).

Loan: Any form of financial assistance subject to repayment which is provided by the Trust to a local governmental unit for all or any part of the cost of a water pollution abatement project.

Loan agreement: Any agreement entered into between the Trust and a local governmental unit pertaining to a loan or local governmental obligations.

Loan commitment: A written commitment by the Trust to make a loan to a local governmental unit to finance a project approved by the Department on terms consistent with the Department's Project Approval Certificate.

Local government unit or local governmental unit: Any town, city, district, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any regional local governmental unit defined in M.G.L.c. 29C, which is responsible for the ownership or operation of a water pollution abatement project and is authorized by a bond act to finance all or any part of the cost thereof through the issue of bonds.

MEPA: The Massachusetts Environmental Policy Act, M.G.L. c 30, ss. 61 through 62H, and as may be further amended from time to time.

NEPA: The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and as may be further amended from time to time.

Nonpoint Source Project: Projects which implement or are consistent with the Nonpoint Source Management Plan, developed and updated by the Department pursuant to s. 319 of the Clean Water Act, which may include, but are not limited to, the repair replacement and/or upgrading of subsurface sewage disposal systems regulated under 310 CMR 15.000 (Title 5), landfill capping and closure, remediation of leaking underground storage tanks, erosion control, and the control of stormwater runoff, brownfields remediation projects, and other water pollution prevention projects.

Policy on Eligible Project Costs: The Department's document entitled "Policy on Eligible Project Costs", as amended, which identifies the specific types of project costs determined by the Department to be generally within the eligible project categories identified in 310 CMR 44.07(1) and (2).

Project Approval Certificate: The certificate issued by the Department to the Trust approving the project and certifying those costs of the project determined by the Department to be eligible for assistance from a loan and those costs eligible for financial assistance pursuant to M.G.L. c. 29C, s.6.

Project Regulatory Agreement: An agreement between the Department and a local governmental unit, executed and delivered to the Trust on or prior to the date of a loan from the Trust to the local governmental unit to finance a project approved by the Department, which contains provisions relating to the Department's regulation and supervision of the project in accordance with 310 CMR 44.00.

State Revolving Fund ("SRF") Program: The financial assistance program for water pollution abatement projects authorized under the Act and the Clean Water Act, including the Water Pollution Abatement Revolving Loan Program established pursuant to M.G.L. c. 29C, the

Department's related authority and responsibilities set forth in M.G.L. c. 21, s.27A and elsewhere in the Act, and the Water Pollution Abatement Revolving Fund established pursuant to M.G.L. c. 29, s.2L.

Title 5: Title 5 of the State Environmental Code, 310 CMR 15.000.

Trust: The Massachusetts Water Pollution Abatement Trust established by M.G.L. c. 29C.

Wastewater Treatment Project: Abatement facilities eligible for SRF assistance under the Clean Water Act providing, or being upgraded or rehabilitated to provide, secondary or more stringent wastewater treatment (or any cost effective alternatives), including conveyancing components (such as interceptors) and appurtenances related to such facilities. Wastewater treatment project does not, however, include activities and/or facilities within the definitions of an Infiltration and Inflow Project or a Collection System Project under 310 CMR 44.03.

Watershed Management Plans: Plans developed, updated and/or approved by the Department to manage the water resources of any watershed or subwatershed which implement or are consistent with the Department's Nonpoint Source Management Plan. Watershed Management Plans may include watershed related plans developed and updated by other parties which, as approved by the Department, implement or are consistent with the Department's Nonpoint Source Management Plan.

Water pollution abatement project: Any abatement facilities, including without limitation rehabilitation of abatement facilities to remove, curtail or otherwise mitigate infiltration and inflow, collection system, treatment works and treatment facilities as defined in M.G.L. c. 21, s. 26A, and any eligible facilities for implementation of a nonpoint source pollution control management program or estuary conservation and management plan pursuant to the Clean Water Act.

44.04: Eligible Projects

- (1) Any water pollution abatement project, as defined in 310 CMR 44.03, is eligible to receive financial assistance from the Trust pursuant to the Act and 310 CMR 44.00. More specifically, eligible projects fall into the following categories:
 - (a) Wastewater Treatment Projects, as defined in 310 CMR 44.03;
 - (b) Infiltration Inflow ("I/I") Projects, as defined in 310 CMR 44.03;
 - (c) Collection System Projects, as defined in 310 CMR 44.03, provided, however, that at least 78.5% of the expected wastewater flow into the proposed collection system will be for wastewater flows in existence as of July 1, 1995, except, subject to the approval of the Department, in areas designated as city or town centers, rural village districts, or brownfields redevelopment areas where no less than 50% of the expected wastewater flow into the proposed collection system will be for wastewater flows in existence as of July 1, 1995;
 - (d) Nonpoint Source Projects, as defined in 310 CMR 44.03, including but not limited to projects financed under the Community Septic Management Program within the Fund to assist eligible homeowners to upgrade failed septic systems in compliance with 310 CMR 15.000 (Title 5) through underlying betterment agreements between a local governmental unit and such homeowners; ~~and~~
 - (e) The planning and/or design for any one of the project categories identified in 310 CMR 44.04(1)(a) through (d), including but not limited to comprehensive wastewater management planning under 310 CMR 44.08(2) and (3) and planning projects which implement the Nonpoint Source Management Plan, as developed and updated by the Department pursuant to s.319 of the Clean Water Act, provided that the total funding allocated for planning and/or design projects shall not exceed 10% of the total financial assistance authorized on the calendar year Intended Use Plan Project Listing portion of the priority list. ~~Nonpoint Source planning projects shall not be subject to the above 10% funding allocation, but this exemption shall expire on January 1, 2000, unless extended in writing by the Department.~~ The Department may modify the above allocation of funds consistent with its identification of planning and/or design projects as a funding priority in a particular calendar year pursuant to 310 CMR 44.06(3); ~~and~~
 - (f) Any project in the categories identified in 310 CMR 44.04(1)(a) through (d) which utilizes a single contractor to design, build and/or operate the project facilities, provided the procurement and use of such contractor is authorized by law, the project conforms with the state constitutional requirements governing the use of Commonwealth funds for public purposes, and the project otherwise meets the requirements of 310 CMR 44.00. The operational costs of such projects shall be ineligible for SRF assistance.

44.05: Priority System

- (1) Establishment of calendar year priority list.
 - (a) Prior to the beginning of each calendar year, the Department shall establish a single, annual list of projects prioritized to receive financial assistance pursuant to 310 CMR 44.00. At its discretion, the Department may group projects on the list into the following three categories: (1) high priority project, (2) medium priority projects, and (3) low priority projects. The priority list rank projects in numerically descending order based on the evaluation of the project pursuant to 310 CMR 44.06. It is the Department's general expectation that, subject to available funding, it will approve for financing all high priority projects and the majority of medium priority projects, while low priority projects will not be approved for financing. In any year in which the Department does not designate high, medium and low priority projects, the Department will prioritize projects in the order of their numerical rating, as determined by the Department based on the proponent's responses to questions in the Project Evaluation Form. For the purpose of prioritizing projects financed under the Community Septic Management Program, which has its own legislatively dedicated funding allotment, the Department may distinguish the priority and the funding status of Community Septic Management Program projects from other projects on the priority list.
 - (b) In establishing the priority list, the Department may require local government units to submit a Project Evaluation Form containing any information deemed necessary by the Department for project evaluation, including but not limited to, information which addresses the proposed project's compliance with the Intended Use Plan Project Listing -criteria in 310 CMR 44.03(2) and the Project Selection Criteria in 310 CMR 44.06. The Department may establish a reasonable deadline for its receipt of such

information, and may decline to evaluate and prioritize a project if the Department determines that the local governmental unit has failed to provide sufficient information.

(c) Prior to adopting the priority list, the Department shall conduct a public hearing to receive and consider public comment on the proposed list. The Department will ensure that notice of the public hearing will be published in one or more newspapers of general circulation thirty (30) days prior to the date of the hearing.

(2) Intended Use Plan Project Listing.

(a) Eligible projects which the Department finds are ready to proceed and for which funds are available in the calendar year in which the priority list is established shall be placed on the Intended Use Plan Project Listing portion of the priority list. The Department reserves the right to establish an Intended Use Plan Project Listing that contains fewer projects than would utilize the total amount of funding available in the relevant calendar year, or, alternatively, to expand the Intended Use Plan Project Listing during the course of the relevant calendar year based on an additional allocation of available funding.

(b) The local governmental unit proposing the project must show that its project meets each of the following criteria in order for the Department to place the project on the Intended Use Plan Project Listing:

1. As determined by the Department, the project's environmental, and/or public health benefits, as evidenced by its priority category on the priority list, are sufficiently high to warrant its funding as a priority in the relevant calendar year;
2. As determined by the Department, the project's environmental and/or public health benefits outweigh any expected negative impacts to water quality or water quantity or to the public health which are directly attributable to the project;
3. The local governmental unit has already obtained its local funding authorization for the project, or has committed to a specific schedule to obtain such funding authorization by June 30th of the relevant calendar year; and
4. The local governmental unit demonstrates to the Department's satisfaction that its project is sufficiently advanced in its implementation such that the local governmental unit will file a complete loan application with the Department for the project by October 15th of the relevant calendar year.

A complete application includes, as applicable, approvable plans and specifications for the project and evidence that the local governmental unit has, at a minimum, filed applications for any permits or environmental reviews applicable to the project.

As provided in 310 CMR 44.11(1)(b), the Department may deny any application which it determines to be incomplete.

(c) In the event that a project placed on Intended Use Plan Project Listing fails during the course of the calendar year to meet one or more of the criteria in 310 CMR 44.05(2)(b), the project may be removed from the Intended Use Plan Project Listing, ~~and returned to the applicable priority category on the priority list.~~ In such event, the Department reserves the right to raise one or more project(s) which are determined by the Department to be of the highest priority and which meet the criteria in 310 CMR 44.05(2)(b), consistent with available funding, to the Intended Use Plan Project Listing. Subject to the availability of funding and the project's priority, the Department further reserves the right to restore any project removed from the Intended Use Plan Project Listing for failure to meet the criteria in 310 CMR 44.05(2)(b) if the project thereafter meets those criteria prior to the end of the relevant calendar year.

(d) The implementation of some projects on the Intended Use Plan Project Listing will take place over two years or more. For such multi-year projects, the Department will limit the amount of actual funding reserved for the project on each annual Intended Use Plan Project Listing to the amount needed to fund the project for ~~one~~two years. In the event that a multi-year project receives a project approval certificate from the Department by the end of the relevant calendar year, the Department will reserve another annual increment(s) of funding for the project on subsequent calendar year Intended Use Plan Project Listings, subject to the availability of funding, and provided the project is implemented in accordance with the schedule in the project approval certificate, as determined by the Department. The limitation on financial assistance in 310 CMR 44.05(3) shall apply to any amounts reserved as annual increments of funding for a multi-year project on subsequent calendar year Intended Use Plan Project Listings.

(3) Limitation on Financial Assistance.

(a) No local government unit shall receive Department approval for financial assistance from the Trust for a project or projects in a calendar year in any amount in excess of 33% of the total financial assistance authorized on the Intended Use Plan Project Listing portion of the priority list in that calendar year, including any amounts reserved as annual increments of funding for a multi-year project on subsequent calendar year Intended Use Plan Project Listings.

(b) The Department reserves the right to waive the borrower limitation on financial assistance set forth in 310 CMR 44.05(3)(a) if the Department determines that one or more projects on the Intended Use Plan Project Listing portion of the applicable priority list has failed or will fail to meet the criteria in 310 CMR 44.05(2)(b) by October 15th in the relevant calendar year, or if the Department allocates additional available funding to the Intended Use Plan Project Listing during the course of the relevant calendar year.

44.06 Project Selection Criteria

(1) Except as provided for in 310 CMR 44.06(2), (3) and (4), the Department will use the evaluation criteria set forth below to determine a project's placement in a high, medium or low project priority category on the calendar year priority list. The Department, through written guidance, will assign a numerical point range to each of the evaluation criteria in 310 CMR 44.06(1) which will be used to further determine a project's placement on the priority list.

(a) Environmental Criteria.

1. The extent to which the project will eliminate or mitigate a risk to public health. Relevant factors to consider may include but are not limited to:

- a. The extent to which the project is needed to improve, restore or protect a public or private drinking water supply.

- b. The size and character of the population threatened or negatively impacted by the identified risk to public health (e.g., users of a community public water system, owners of private wells, the number of children, the elderly, persons with pre-existing health risks), and the extent to which the project will eliminate or mitigate the public health risk to the identified population.
 - c. The extent to which the project will eliminate or mitigate a public health hazard or public nuisance, as determined by the local health authority and/or the Department (e.g., sewerage surcharging; failed 310 CMR 15.000 (Title 5) systems).
2. The severity of the environmental problem which the project is intended to address. Relevant factors to consider may include but are not limited to:
- a. The severity of the specific water quality or sediment parameter problems in the relevant water body (e.g., biochemical oxygen demand, suspended solids, pH, temperature, nitrogen, phosphorus, metals).
 - b. Whether the relevant water body has been identified on the Commonwealth's s.303(d) list as failing to meet water quality standards for specific parameters.
 - c. Whether the relevant water body currently meets water quality standards and its designated water quality uses under 314 CMR 4.00, including any Total Maximum Daily Load ("TMDL") established by the Department for the relevant water body.
 - d. Whether the relevant water body is a significant public recreation resource, a state Area of Critical Environmental Concern, an outstanding resource water as determined by the Commonwealth, a federally designated river, etc.
 - e. Whether there are adverse impacts to living resources such as commercial or recreational fisheries, or endangered or wildlife species and their habitats.
 - f. The extent to which there are other sensitive environmental resources (such as wetlands, Zones I and II of public water supplies, shellfish or cold water fisheries) or water dependent recreational uses which are threatened or negatively impacted by the identified environmental problem.
3. The extent to which the project will have demonstrable water quality benefits which will effectively address the identified environmental problem. Relevant factors to consider may include but are not limited to:

The extent to which the local governmental unit's jurisdiction and the project's objectives, scope and proposed implementation demonstrate the project's capability to eliminate or significantly mitigate the identified environmental problems.

4. The extent to which the project is needed to come into or maintain compliance with applicable federal and/or state discharge permit(s) or other federal and/or state water pollution control requirements, and the effect of compliance on water quality and/or public health. Relevant factors to consider may include but are not limited to:
- a. The extent to which the project is needed to ensure compliance with an existing federal or state court or administrative order.
 - b. The extent to which the project is needed to ensure compliance with a federal or state discharge permit (e.g., NPDES permit limits) or federal or state water pollution control regulation (e.g., 310 CMR 15.000 (Title 5)).
 - c. The extent to which the project's maintenance of compliance with an order, discharge permit or regulation demonstrably benefits or protects the water quality and/or public health (e.g., projects which rehabilitate or upgrade existing facilities and are designed to keep a facility in compliance and/or to prevent water resource degradations).

(b) Program and Implementation Criteria.

1. The extent to which the project implements or is consistent with one or more current watershed management plans (e.g., DEP basin plans) and/or watershed protection plans (e.g., local Zone II land use controls, comprehensive conservation management plans), or otherwise effectively addresses a watershed priority, as determined by the Department.
2. The extent to which the capacity provided by the project is needed, including, more specifically, whether the project will duplicate existing treatment or disposal capacity available at an economic cost within the relevant region.
3. The extent to which, as determined by the Department, the project's environmental and/or public health benefits outweigh any expected negative impacts to water quality, water quantity or to the public health which are directly attributable to the project.
4. The extent to which the project is consistent with local and regional growth and/or infrastructure plans, and promotes the rehabilitation and revitalization of infrastructure, structures, sites, and areas previously developed and still suitable for economic (re)use, ~~as provided in Executive Order 385.~~
5. Whether the project constitutes or is a component of a multi-community or regional approach to addressing the identified environmental problem.
6. The extent to which the project utilizes Department-approved innovative/alternative technology to effectively address the identified environmental problem.
7. Whether the local governmental unit has implemented a pricing system for sewer services in accordance with the provisions of M.G.L. c. 40, s.39J and c. 275, Acts of 1985.

(2) Certain of the project selection criteria in 310 CMR 44.06(1) do not apply to planning projects (e.g., the extent to which the project will have demonstrable water quality benefits which will effectively address the identified problem). The Department will limit its evaluation of planning projects to the relevant criteria.

(3) In establishing the calendar year priority list pursuant to 310 CMR 44.05(1), the Department may:

- (a) identify project categories and/or watersheds as funding priorities warranting a high priority status in a particular calendar year, consistent with the Project Selection Criteria in 310 CMR 44.06(1); and

(b) modify and/or further specify the factors or point system to be used to evaluate the extent to which a project meets the Project Selection Criteria in 310 CMR 44.06(1), including any project or program priorities identified by the Department as a funding priority in a particular calendar year pursuant to 310 CMR 44.06(3) and (4).

(4) Before finally adopting substantial modifications to the Project Selection Criteria and/or the related point system, the Department will notice such modifications in the *Environmental Monitor* and provide an opportunity for public comment for a period of not less than thirty days, including conducting a minimum of one public hearing.

44.07: Eligible Project Costs

(1) Costs which the Department determines are necessary for the completion of the project are eligible for financing in the loan and to receive a subsidy under the loan.

(2) Costs which the Department determines are not necessary for completion of the project are ineligible for financing in the loan.

(3) The Department will base its eligible project cost determinations on its "Policy on Eligible Project Costs", which identifies the specific types of costs that are within the two categories under 310 CMR 44.07(1) and (2).

(4) Project costs incurred by an applicant prior to the date of issuance of the Department's project approval certificate are not eligible for a subsidy under the loan, except as follows:

(a) Preliminary engineering, comprehensive wastewater management planning, design or related professional services and construction work, may be approved by the Department prior to the issuance of a project approval certificate as project costs eligible for subsidy if:

1. the applicant has submitted a written and adequately substantiated request for approval;
2. written approval by the Department is obtained before initiation of the project and award of any loan for the project; and
3. the project is included and maintains its status on the current calendar year Intended Use Plan Project Listing.

(b) The Department's prior approval of costs in accordance with 310 CMR 44.07(4)(a) does not constitute a commitment to approve financial assistance for any project. Instead, such costs will be considered eligible project costs only if a loan is made by the Trust for the project. Accordingly, an applicant receiving the Department's prior approval of costs in accordance with 310 CMR 44.07(4)(a) proceeds at its own risk.

(5) Costs incurred in excess of the approved project costs are not eligible for financing by the loan unless the project approval certificate and the loan are both amended to include the cost increase.

(6) A loan recipient shall exercise its best efforts to accomplish the work program set forth in the loan within the loan amount. Whenever a loan recipient reasonably believes that its project costs will exceed or be substantially less than the approved loan amount, it must promptly notify the Department in writing. The loan recipient must submit revised cost estimates for the project to the Department as soon thereafter as practicable. Neither the Department nor the Trust is under any obligation to approve costs in excess of the amount previously approved in the project approval certificate and loan.

(7) The final eligible project costs shall be the eligible costs approved by the Department upon completion of the project, unless audited. If such project costs are audited, the final eligible costs shall be the eligible costs approved by the Department at the completion of the audit.

44.08: Planning Requirements

(1) Introduction. 310 CMR 44.08 addresses two categories of requirements related to planning. 310 CMR 44.08(2) requires a local government unit to demonstrate that its SRF project is consistent with existing state, regional and local water resource and wastewater planning requirements. The Department's Guide to Water Resource Management Planning 310 CMR 44.08(3) identifies twothree levels of SRF-specific project planning (Project Evaluation or Engineering Reports, eComprehensive Water Resource wastewater mManagement pPlanssing and Integrated Water Resource Management Plansor a project-evaluation report) which may be used to evaluate apply to different types of SRF projects. In summary, comprehensive wastewater management planning is limited to complex and/or controversial SRF projects, as determined by the Department; a less comprehensive project evaluation report is required for all other SRF projects. Unless determined otherwise by the Department, Comprehensive Wastewater Management Plans or Integrated Water Resource Management Plans are required only for controversial or complex wastewater projects. Unless otherwise determined by the Department, a less comprehensive report, the Project Evaluation Report or Engineering Report, is required for all other wastewater projects eligible for financial assistance from the SRF.

(2) Consistency of SRF projects with Water Resource and Wastewater Planning Requirements.

(a) As provided in M.G.L. c. 21, s.27A(d), a local government unit applying for assistance from the Trust must demonstrate that its project is consistent with existing state, regional and local water resource and wastewater planning requirements, including but not limited to:

1. river basin water quality plans pursuant to s.303(e) of the Clean Water Act;
2. nonpoint source management plans pursuant to s.319 of the Clean Water Act;

3. estuaries management plans pursuant to s.320 of the Clean Water Act;
 4. local water resource management plans pursuant to regulations of the water resources commission; and
 5. water emergency planning pursuant to M.G.L. c. 21G.
- (b) Applicants shall also certify that land use and other controls in place (e.g., zoning bylaws) are consistent with the wastewater system service populations projected in any comprehensive wastewater management plan of the applicant. An applicant's certification shall include a description of all such land use and other controls in place as supporting documentation for its certification.

(3) Planning Required for SRF Projects.

(a) Comprehensive Wastewater and Integrated Water Resource Management Planning. Unless otherwise determined by the Department, ~~major, complicated or controversial wastewater projects having major, complicated or controversial project scope, siting, implementation or impact issues~~ shall be the result of a Comprehensive Wastewater Management Planning, or an Integrated Water Resource Management Plan that systematically: (a) assesses the need for the project; (b) examines alternatives to the project; (c) proposes a plan and schedule for the project; (d) evaluates all the environmental impacts of the project including without limitation secondary growth impacts and impacts of the overall water balance in the watershed or subwatershed; (e) identifies means of mitigating those impacts; (f) demonstrates that the project is not only environmentally appropriate and cost-effective, but also implementable from a legal, institutional, financial and management standpoint. The Department will determine the scope of work for any Comprehensive Management Plan or Integrated Water Resource Management Plan used to fulfill the requirements set forth herein in accordance with the Department's Guide to Water Resource Management Planning. The Scope of Work for all Comprehensive Management Plans and Integrated Water Resource Management Plans must provide for a public participation program that includes at a minimum one public meeting to discuss the alternatives to the project and their environmental impacts and a public hearing on the environmental impacts, plan, and schedule of the project. as described in 310 CMR 44.08(3). ~~Examples of such projects include, but are not limited to, major wastewater treatment facilities, projects where the only solutions identified to date will likely result in impacts on sensitive environmental resources, and projects which may result in a long term impact on the water quality of the receiving waters, such as combined sewer overflow projects.~~

1. ~~Comprehensive Wastewater Management Planning involves a systematic evaluation of the project need and the project alternatives. Through an evaluation of feasible project alternatives, the comprehensive wastewater management plan must demonstrate that the selected alternative is cost effective and implementable from legal, institutional, financial and management standpoints.~~

2. ~~The Department will determine the required scope of a comprehensive wastewater management plan based on the nature and duration of the proposed project. However, unless otherwise determined by the Department, the comprehensive wastewater management planning must be performed consistent with the Department's "Guide to Comprehensive Wastewater Management Planning". The Department's "Guide to Comprehensive Wastewater Management Planning" sets forth specific guidance on the required components of the comprehensive wastewater management process, including the identification of the wastewater needs/problems, the development and evaluation of alternatives, the cost effectiveness analysis, the selection of an alternative, and the public participation requirements.~~

(b) Project Evaluation or Engineering Report. Unless otherwise determined by the Department, planning for projects other than the project categories identified in 310 CMR 44.08(3)(a) shall be limited to the development of a Project Evaluation or Engineering Report. ~~as described in 310 CMR 44.08(3)(b).~~ Based on the nature and duration of the proposed project, the Department will determine the required scope of the Project Evaluation or Engineering Report in accordance with the Guide to Water Resource Management Planning.

~~The Department will determine the required scope of a Project Evaluation Report based on the nature and duration of the proposed Nonpoint Source project. However, u~~Unless otherwise determined by the Department, a complete Project Evaluation or Engineering Report for a wastewater project shall ~~must~~ include:

1. A description of the proposed project;
2. An ~~analysis~~ of the cost-effectiveness of the project and the alternatives considered;
3. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:
 - a. the relevant design parameters for the project;
 - b. the estimated capital construction and operation and maintenance costs of the project ~~(identifying possible federal, state and local shares), and a description of the manner in which local costs will be financed;~~
 - c. the cost impacts on system users and non-users, or where the project is not user-based, cost impacts on the local government unit budget; and
 - d. the institutional, financial, legal and management arrangements necessary for successful implementation of the project.
4. A public participation program that includes, at a minimum, one public meeting on the proposed project. ~~to discuss the alternatives and their environmental impact and a public hearing on the recommended plan including its environmental impact.~~

44.09 Environmental Review- and Federal Cross-Cutter- Requirements

(1) Environmental Review Requirements.

(a) All projects approved by the Department to receive a loan from the Trust shall, at a minimum, comply with the requirements of MEPA and the regulations promulgated thereunder at 301 CMR 11.00. In addition, a public hearing shall be held on the project if the Department determines that the project is controversial, or if the Department otherwise determines that a hearing is in the public interest. The Department may also require the local governmental unit to consider project alternatives and to provide the public an opportunity to comment on such alternatives.

(b) Projects required to be the result of comprehensive wastewater management planning, as provided in 310 CMR 44.08(2)(a) and (3), shall also comply with the environmental review and process requirements in the Department's ~~"Guide to Comprehensive Wastewater Management Planning"~~Guide to Water Resource Management Planning.

(2) Federal Cross-Cutter Requirements. All projects to be funded by funds directly made available by federal capitalization grants shall comply with all federal cross-cutters applicable to the project, as determined by the Department. The Department may require any other project to comply with one or more of the federal cross-cutters deemed applicable to the project by the Department.

44.10: Affirmative Action and M/WBE Requirements

~~(1) —~~ Local governmental units receiving financial assistance from the Trust shall comply with applicable federal and state anti discrimination laws and requirements, including the Department's requirements in the areas of Affirmative Action in employment and Minority and Women Business Enterprise ("M/WBE") utilization in contracting.

~~(a) In the area of Affirmative Action, such local government units shall adopt, for use in all contracts for construction projects with a dollar value in excess of \$10,000, an adapted version of the Commonwealth of Massachusetts "Supplemental Equal Employment Opportunity Anti-discrimination and Affirmative Action Program." Such contracts may include minority workforce percentages greater than those required for the geographical locations of the construction project as set forth in the Supplemental Program.~~

~~(b) In the area of M/WBE utilization, such local governmental units shall make positive efforts to use M/WBEs for use in all construction, service and supply subagreements for the project financed by the loan.~~

~~1. Such efforts should achieve the applicable federal and/or state goals established for MBE participation and WBE participation, but, at a minimum, should allow M/WBEs the maximum feasible opportunity to compete for project subagreements.~~

~~2. The local governmental unit receiving a loan from the Trust shall promptly notify the Department in writing when it has good reason to believe that its positive efforts to use M/WBEs in the subagreements for the project will not achieve one or both of the applicable M/WBE utilization goals.~~

~~3. Prior to the publication of the availability of any contract for construction work in excess of \$10,000 to be performed under any financial assistance program pursuant to 310 CMR 44.00, the local government unit shall notify the State Office of Minority and Women Business Assistance ("SOMWBA") of its intent to solicit bids, and shall make available to SOMWBA (upon request) copies of the proposal and/or invitation to bid and the related plans and specifications.~~

44.11 Project Approval and Regulation

(1) Application.

(a) A local governmental unit whose project is on the Intended Use Plan Project Listing portion of the calendar year priority list must first apply to the Department to receive a loan from the Trust to finance costs of the project. The local governmental unit must file a complete application with the Department containing the following information and documentation:

1. General Information which must include evidence of a funding authorization by the local governmental unit sufficient to cover the project cost, and certification of the authority of the local governmental unit to file the application.

2. Financial Information pertinent to the Trust's evaluation of the applicant's ability to repay the loan.

3. Project Information which demonstrates to the Department's satisfaction that the project is sufficiently advanced in its implementation, including, as applicable:

a. approvable plans and specifications for the project;

b. evidence that the local governmental unit has, at a minimum, filed applications for any permits or environmental reviews applicable to the project;

c. the project scope of work, project evaluation report, or the comprehensive wastewater management planning for the project; and

d. a project schedule that demonstrates to the Department's satisfaction that the project will commence no later than six months from the expected date of issuance of a project approval certificate, assuming the Department determines that the project is approvable.

4. Supplemental Information such as title to project site or evidence of some other appropriate property interest in the project site, any necessary inter-municipal agreements, documentation related to the user charge system, etc.

5. Applicant Certification as to the completeness of the application in accordance with the Department's application form and requirements, and as to the accuracy and completeness of the information provided by the applicant in its application.

- (b) The Department may deny any application which it determines to be incomplete. Prior to taking final action on an application, the Department may request the applicant to clarify and/or supplement information contained in its application, or to attend an informal conference(s) with the Department to discuss the application.
- (2) Project Approval Certificate.
- (a) The Department's approval of an applicant's project shall be contained in a Project Approval Certificate issued to the Trust. As provided in the Act, the Department's issuance of a Project Approval Certificate is a prior necessary condition to the award of a loan by the Trust to finance the costs of a project.
- (b) The Department shall not approve a project for a loan from the Trust unless the local governmental unit:
1. demonstrates that its project is consistent with existing state, regional and local water resource and wastewater planning requirements as described in 310 CMR 44.08(2) ("Consistency with Water Resource and Wastewater Planning Requirements"); and
 2. adopts a user charge system in accordance with the Department guidance which is designed to provide adequate revenues required for operation and maintenance, including replacement, of the project.
- The Department reserves the discretion to determine that the user charge system requirement does not apply to certain Nonpoint Source Projects (e.g., a stormwater control project that is not providing ongoing service to an identified set of users).
- (c) In addition to approving the project, the Project Approval Certificate shall certify those costs of the project determined by the Department to be eligible for assistance from a loan, and those costs determined to be eligible for a subsidy or interest rate under the loan. The Project Approval Certificate shall also identify the level of subsidy applicable to the project in accordance with M.G.L. c. 29C and, as applicable, any additional subsidy applicable to the project authorized by special law. Subsidy is expressed as an interest rate grant equivalency percentage in the Project Approval Certificate.
- (d) The Project Approval Certificate may also contain such other conditions and limitations as the Department deems necessary to ensure compliance by a local governmental unit with 310 CMR 44.00 and with all other federal and state statutes and regulations applicable to the construction and operation of the project. Such conditions shall include, but are not limited to, a project completion schedule which shall require the local government unit to initiate the project, as determined by the Department, no later than six months from the date of the Department's issuance of the Project Approval Certificate. The Department, at its sole discretion, may extend this six-month deadline based on evidence demonstrating to the Department's satisfaction that the delay is beyond the reasonable control of and without the fault of the local governmental unit or its contractors or other agents.
- (e) The Department shall issue the Project Approval Certificate to the Trust for its action and forward a copy of such certificate to the local governmental unit concurrently. The Trust shall thereafter enter into a loan commitment with a local governmental unit consistent with the terms of the Project Approval Certificate. Following entry into a binding loan commitment, the Trust shall prepare and deliver a loan agreement for execution by the local governmental unit, consistent with the terms of the Project Approval Certificate as incorporated into the Department's Project Regulatory Agreement.
- (3) Project Regulatory Agreement.
- (a) On or prior to the date of a loan from the Trust for a project approved by the Department, the local governmental unit and the Department shall execute and deliver to the Trust a Project Regulatory Agreement relating to the Department's regulation and supervision of the project in accordance with 310 CMR 44.00. The Project Regulatory Agreement shall be in form and substance satisfactory to the Department. The Project Regulatory Agreement shall be incorporated by reference in the Trust loan agreement and failure by the local governmental unit to comply with the Project Regulatory Agreement shall constitute an event of default under the loan agreement.
- (b) The Project Regulatory Agreement shall contain provisions consistent with the Project Approval Certificate. In addition to incorporating pertinent conditions in the Project Approval Certificate, the Project Regulatory Agreement may also contain such other conditions and limitations as the Department deems necessary for its regulation and supervision of the project in accordance with 310 CMR 44.00, including but not limited to:
1. the schedule for disbursement of loan proceeds;
 2. the payment requisition requirements and procedures;
 3. the requirements and procedures for the Department's audit of payment requisitions;
 4. covenants by the local governmental unit related to the project, including a covenant to comply with all federal and state statutes and regulations applicable to the local governmental unit's construction and operation of the project;
 5. the measures available to the Department to remedy a default by the local governmental unit under the Project Regulatory Agreement;
 6. any requirements regarding certification of a project's performance in accordance with the Department's approval;
 7. compliance with the Department's guidance on the use of and requirements for professional subagreements.

REGULATORY AUTHORITY:

310 CMR 44.00: St. 1989, c. 275, s. 3; St. 1992, c. 203, s. 1; M.G.L. c. 21, s. 27A